

111TH CONGRESS
1ST SESSION

H. R. 1212

To amend the Sarbanes-Oxley Act of 2002 to provide oversight of auditors of brokers and dealers by the Public Company Accounting Oversight Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2009

Mr. KANJORSKI introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To amend the Sarbanes-Oxley Act of 2002 to provide oversight of auditors of brokers and dealers by the Public Company Accounting Oversight Board, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. OVERSIGHT OF BROKERS AND DEALERS.**

4 (a) DEFINITIONS.—Title I of the Sarbanes-Oxley Act
5 of 2002 is amended by adding at the end the following
6 new section:

1 **“SEC. 110. DEFINITIONS.**

2 “For the purposes of this title, and notwithstanding
3 section 2:

4 “(1) AUDIT.—The term ‘audit’ means an exam-
5 ination of the financial statements of any issuer,
6 broker, or dealer by an independent public account-
7 ing firm in accordance with the rules of the Board
8 or the Commission (or, for the period preceding the
9 adoption of applicable rules of the Board under sec-
10 tion 103, in accordance with then-applicable gen-
11 erally accepted auditing and related standards for
12 such purposes), for the purpose of expressing an
13 opinion on such statements.

14 “(2) AUDIT REPORT.—The term ‘audit report’
15 means a document or other record—

16 “(A) prepared following an audit per-
17 formed for purposes of compliance by an issuer,
18 broker, or dealer with the requirements of the
19 securities laws; and

20 “(B) in which a public accounting firm ei-
21 ther—

22 “(i) sets forth the opinion of that firm
23 regarding a financial statement, report, or
24 other document; or

25 “(ii) asserts that no such opinion can
26 be expressed.

1 “(3) PROFESSIONAL STANDARDS.—The term
2 ‘professional standards’ means—

3 “(A) accounting principles that are—

4 “(i) established by the standard set-
5 ting body described in section 19(b) of the
6 Securities Act of 1933, as amended by this
7 Act, or prescribed by the Commission
8 under section 19(a) of that Act (15 U.S.C.
9 17a(s)) or section 13(b) of the Securities
10 Exchange Act of 1934 (15 U.S.C. 78a(m));
11 and

12 “(ii) relevant to audit reports for par-
13 ticular issuers, brokers, or dealers, or dealt
14 with in the quality control system of a par-
15 ticular registered public accounting firm;
16 and

17 “(B) auditing standards, standards for at-
18 testation engagements, quality control policies
19 and procedures, ethical and competency stand-
20 ards, and independence standards (including
21 rules implementing title II) that the Board or
22 the Commission determines—

23 “(i) relate to the preparation or
24 issuance of audit reports for issuers, bro-
25 kers, or dealers; and

1 “(ii) are established or adopted by the
2 Board under section 103(a), or are pro-
3 mulgated as rules of the Commission.

4 “(4) BROKER.—The term ‘broker’ means a
5 broker (as such term is defined in section 3(a)(4) of
6 the Securities Exchange Act of 1934 (15 U.S.C.
7 78c(a)(4))) that is required to file a balance sheet,
8 income statement, or other financial statement
9 under section 17(e)(1)(A) of such Act (15 U.S.C.
10 78q(e)(1)(A)), where such balance sheet, income
11 statement, or financial statement is required to be
12 certified by a registered public accounting firm.

13 “(5) DEALER.—The term ‘dealer’ means a
14 dealer (as such term is defined in section 3(a)(5) of
15 the Securities Exchange Act of 1934 (15 U.S.C.
16 78c(a)(5))) that is required to file a balance sheet,
17 income statement, or other financial statement
18 under section 17(e)(1)(A) of such Act (15 U.S.C.
19 78q(e)(1)(A)), where such balance sheet, income
20 statement, or financial statement is required to be
21 certified by a registered public accounting firm.

22 “(6) SELF-REGULATORY ORGANIZATION.—The
23 term ‘self-regulatory organization’ has the same
24 meaning as in section 3(a)(26) of the Securities Ex-
25 change Act of 1934 (15 U.S.C. 78c(a)(26)).”.

1 (b) ESTABLISHMENT AND ADMINISTRATION OF THE
2 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
3 Section 101 of such Act is amended—

4 (1) by striking “issuers” each place it appears
5 and inserting “issuers, brokers, and dealers”;

6 (2) in subsection (a), by striking “public com-
7 panies” and inserting “companies”; and

8 (3) in subsection (a), by striking “for compa-
9 nies the securities of which are sold to, and held by
10 and for, public investors”.

11 (c) REGISTRATION WITH THE BOARD.—Section 102
12 of such Act is amended—

13 (1) by striking “Beginning 180 days after the
14 date of the determination of the Commission under
15 section 101(d), it” and inserting “It”;

16 (2) in subsections (a) and (b)(2)(G), by striking
17 “issuer” each place it appears and inserting “issuer,
18 broker, or dealer”; and

19 (3) by striking “issuers” and inserting “issuers,
20 brokers, and dealers”.

21 (d) AUDITING AND INDEPENDENCE.—Section 103(a)
22 of such Act is amended—

23 (1) in paragraph (1), by striking “and such eth-
24 ics standards” and inserting “such ethics standards,
25 and such independence standards”;

1 (2) in paragraph (2)(A)(iii), by striking “de-
 2 scribe in each audit report” and inserting “in each
 3 audit report for an issuer, describe”; and

4 (3) in paragraph (2)(B)(i), by striking
 5 “issuers” and inserting “issuers, brokers, and deal-
 6 ers”.

7 (e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-
 8 ING FIRMS.—Section 104 of such Act is amended—

9 (1) in subsection (a), by striking “issuers” and
 10 inserting “issuers, brokers, and dealers”;

11 (2) in subsection (b)(1)(A), by inserting before
 12 the semicolon the following “or more than 100 bro-
 13 kers and dealers”; and

14 (3) in subsection (b)(1)(B), by striking “100 or
 15 fewer issuers” and inserting “issuers, brokers, or
 16 dealers, but is not described in subparagraph (A)”.

17 (f) INVESTIGATIONS AND DISCIPLINARY PRO-
 18 CEEDINGS.—Section 105(c)(7)(B) of such Act is amend-
 19 ed—

20 (1) by striking “any issuer” each place it ap-
 21 pears and inserting “any issuer, broker, or dealer”;
 22 and

23 (2) by striking “an issuer under this sub-
 24 section” and inserting “a registered public account-
 25 ing firm under this subsection”.

1 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
 2 106 of such Act is amended—

3 (1) by striking “issuer” and inserting “issuer,
 4 broker, or dealer”; and

5 (2) by striking “issuers” and inserting “issuers,
 6 brokers, or dealers”.

7 (h) FUNDING.—Section 109 of such Act is amend-
 8 ed—

9 (1) in subsection (c)(2), by striking “subsection
 10 (i)” and inserting “subsection (j)”;

11 (2) in subsection (d)(2), by striking “allowing
 12 for differentiation among classes of issuers, as ap-
 13 propriate” and inserting “and among brokers and
 14 dealers that are not issuers, in accordance with sub-
 15 section (h), and allowing for differentiation among
 16 classes of issuers and brokers and dealers, as appro-
 17 priate”;

18 (3) by redesignating subsections (h), (i), and (j)
 19 as subsections (i), (j), and (k), respectively; and

20 (4) by inserting after subsection (g) the fol-
 21 lowing new subsection:

22 “(h) ALLOCATION OF ACCOUNTING SUPPORT FEES
 23 AMONG BROKERS AND DEALERS.—

24 “(1) IN GENERAL.—Any amount due from bro-
 25 kers and dealers that are not issuers (or a particular

class of such brokers and dealers) under this section to fund the budget of the Board shall be allocated among and payable by such brokers and dealers (or such brokers and dealers in a particular class, as applicable). A broker or dealer's allocation shall be in proportion to the broker or dealer's net capital compared to the total net capital of all brokers and dealers that are not issuers, in accordance with the rules of the Board.

“(2) OBLIGATION TO PAY.—Every broker or dealer shall pay the share of a reasonable annual accounting support fee or fees allocated to such broker or dealer under this section.”.

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY ORGANIZATION.—Section 105(b)(4)(B) of the Sarbanes-Oxley Act of 2002 is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following new clause:

“(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization;”.

1 (j) USE OF DOCUMENTS RELATED TO AN INSPEC-
 2 TION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of
 3 such Act is amended—

4 (1) in subclause (III), by striking “and”;

5 (2) in subclause (IV), by striking the comma
 6 and inserting “; and”; and

7 (3) by inserting after subclause (IV) the fol-
 8 lowing new subclause:

9 “(V) a self-regulatory organiza-
 10 tion, with respect to an audit report
 11 for a broker or dealer that is subject
 12 to the jurisdiction of such self-regu-
 13 latory organization,”.

14 **SEC. 2. EFFECTIVE DATE.**

15 The amendments made by this Act shall take effect
 16 180 days after the date of the enactment of this Act.

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